

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (Amendment)

5 907 KAR 8:005. Definitions for 907 KAR Chapter 8.

6 RELATES TO: KRS 194A.025(3)

7 STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1),
8 205.520(3), 42 U.S.C. 1396a

9 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
10 Services, Department for Medicaid Services, has responsibility to administer the Medi-
11 caid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to
12 comply with a requirement that may be imposed or opportunity presented by federal law
13 to qualify for federal Medicaid funds. This administrative regulation establishes the defi-
14 nitions for 907 KAR Chapter 8.

15 Section 1. Definitions. (1)"Adult" means an individual who is at least twenty-one (21)
16 years of age.

17 (2) "Adult day health care program" or "ADHC program" means a program that is:

18 (a) Licensed pursuant to 902 KAR 20:066; and

19 (b) An adult day health program pursuant to KRS 216B.0441.

(3)[(2)] "Advanced practice registered nurse" is defined by KRS 314.011(7).

(4)[(3)] "Child" means an individual who is under twenty-one (21) years of age.

(5) "Comprehensive outpatient rehabilitation facility" or "CORF" means an entity that is:

(a) Defined as a CORF in accordance with 42 U.S.C. 1395x(cc)(2); and

(b) Licensed as a rehabilitation agency pursuant to 902 KAR 20:190.

(6)[(4)] "Department" means the Department for Medicaid Services or its designee.

(7)[(5)] "Electronic signature" is defined by KRS 369.102(8).

(8)[(6)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(9)[(7)] "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(10)[(8)] "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(11) "Mobile health service" means an entity that is licensed pursuant to 902 KAR 20:275.

(12) "Multi-therapy agency" or "MTA" means a provider group:

(a) Comprised of any combination of the following:

1. One (1) or more occupational therapists;

2. One (1) or more physical therapist; or

3. One (1) or more speech-language pathologists; and

(b) Unless exempt from licensure in statute, licensed:

1 1. In the state in which they practice; and

2 2. To provide occupational therapy, physical therapy, or speech-language pathology
3 services.

4 (13)[(9)] "Occupational therapist" is defined by KRS 319A.010(3).

5 (14)[(40)] "Occupational therapy assistant" is defined by KRS 319A.010(4).

6 (15)[(41)] "Physical therapist" is defined by KRS 327.010(2).

7 (16)[(42)] "Physical therapist assistant" means a skilled health care worker who:

8 (a) Is certified by the Kentucky Board of Physical Therapy; and

9 (b) Performs physical therapy and related duties as assigned by the supervising
10 physical therapist.

11 (17)[(43)] "Physician" is defined by KRS 311.550(12).

12 (18)[(44)] "Physician assistant" is defined by KRS 311.840(3).

13 (19)[(45)] "Prior authorized" means authorized by:

14 (a) The department, if the service is for a recipient who is not an enrollee; or

15 (b) A managed care organization, if the service is for an enrollee.

16 (20)[(46)] "Provider" is defined by KRS 205.8451(7).

17 (21)[(47)] "Recipient" is defined by KRS 205.8451(9).

18 (22) "Rehabilitation agency" means an entity that is licensed as a rehabilitation agen-
19 cy pursuant to 902 KAR 20:190.

20 (23) "Special health clinic" means an entity that is licensed as a special health clinic
21 pursuant to 902 KAR 20:260.

22 (24)[(48)] "Speech-language pathologist" is defined by KRS 334A.020(3).

23 (25) "Speech-language pathology clinical fellow" means an individual who is recog-

- 1 nized by the American Speech-Language-Hearing Association as a speech-language
- 2 pathology clinical fellow.
- 3 (26) "State plan" is defined by 42 C.F.R. 400.203.

907 KAR 8:005

REVIEWED:

Date

Lisa Lee, Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on January 21, 2016 at 9:00 a.m. in Suite A of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing January 13, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business February 1, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 8:005
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations promulgated under 907 KAR Chapter 8, Occupational Therapy, Physical Therapy, and Speech-Language Pathology Services.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions related to administrative regulations promulgated under 907 KAR Chapter 8.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions related to administrative regulations promulgated under 907 KAR Chapter 8.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the definitions related to administrative regulations promulgated under 907 KAR Chapter 8.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendments are necessary to establish definitions for the following new administrative regulations: 907 KAR 8:040, Coverage of occupational therapy, physical therapy, and speech-language pathology services provided by various entities; and 907 KAR 8:045, Reimbursement for occupational therapy, physical therapy, and speech-language pathology services provided by various entities.
 - (b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish definitions for 907 KAR 8:040 and 907 KAR 8:045.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing definitions 907 KAR 8:040 and 907 KAR 8:045.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the of the effective administration of the authorizing statutes by establishing definitions for 907 KAR 8:040 and 907 KAR 8:045.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Adult day health care (ADHC) programs, occupational therapists, physical therapists, speech-language

pathologists, multi-therapy groups (combination of occupational therapists, physical therapists, and speech-language pathologists), comprehensive outpatient rehabilitation facilities (CORFs), special health clinics, rehabilitation agencies, mobile health services, and recipients of the services will be affected by the administrative regulation in that it defines terms related to those services.

- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No action is necessary as this is an administrative regulation that establishes definitions.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed as this is an administrative regulation that establishes definitions.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). No compliance is necessary as this is an administrative regulation that establishes definitions.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: No cost is necessary to implement the amendment.
 - (b) On a continuing basis: No continuing cost is necessary to implement the amendment.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly nor indirectly increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is neither applied nor necessary as the administrative regulation establishes definitions for 907 KAR Chapter 8.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation Number: 907 KAR 8:005

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1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to define Medicaid terms in an administrative regulation.
2. State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act."
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate to define Medicaid terms in an administrative regulation. There is; however, a mandate to ensure recipient access to services covered by the state's Medicaid program. As the Department for Medicaid Services (DMS) covers occupational therapy, physical therapy, and speech-language pathology services it must ensure that an adequate provider base exists to ensure recipient access to care. A relevant federal law – 42 U.S.C. 1396a(a)(30) requires a state's Medicaid program to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

Creating a new base of authorized providers comports with the intent of the aforementioned federal law.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation Number: 907 KAR 8:005

Agency Contact Person: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
 - (c) How much will it cost to administer this program for the first year? No cost is necessary to implement this administrative regulation in the first year.
 - (d) How much will it cost to administer this program for subsequent years? No cost is necessary in subsequent years to implement this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: